

SECOND REGULAR SESSION

SENATE BILL NO. 1062

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCOTT.

Read 1st time February 15, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

4746S.011

AN ACT

To amend chapter 491, RSMo, by adding thereto one new section relating to the videotaped depositions of mentally retarded persons.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 491, RSMo, is amended by adding thereto one new section, to be known as section 491.730, to read as follows:

491.730. 1. For the purposes of this section, the following terms shall mean:

(1) "Mentally retarded person", an individual with a condition involving substantial limitations in general functioning characterized by significantly subaverage intellectual functioning with continual extensive related deficits and limitations in two or more adaptive behaviors such as communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure and work, which conditions are manifested and documented before eighteen years of age;

(2) "Essential witness", a prospective witness in the prosecution of a criminal charge who is an eyewitness to the offense or without whose testimony a conviction could not be obtained because the testimony would establish a material element of the offense that cannot be proven in any other manner.

2. In any criminal prosecution under the provisions of chapter 565, 566, or 568, RSMo, upon the motion of the prosecuting attorney, the court may order that an in-camera videotaped deposition of the testimony of a mentally retarded person be made for use as substantive evidence at preliminary hearings and at trial. The videotaping of the testimony of such persons must meet the requirements of this section.

22 3. The court may make an order that the in-camera videotaped
23 testimony of a mentally retarded person be admissible in lieu of the
24 person's personal appearance and testimony at preliminary hearings
25 and at trial, notwithstanding any other provision of law to the
26 contrary, if:

27 (1) A physician, psychiatrist, psychologist, or other mental health
28 or social work professional has certified that the person is a mentally
29 retarded person, as defined by section 565.030, RSMo; and

30 (2) The testimony to be taken is the testimony of a mentally
31 retarded person who is the alleged victim of the offense, or is an
32 essential witness in the proceeding; and

33 (3) The court finds, at a hearing, that a likelihood exists that the
34 mentally retarded person would suffer significant emotional or
35 psychological trauma as the result of testifying in the physical presence
36 of the defendant, which makes the person unavailable as a witness at
37 the time of the preliminary hearing or trial, or the court finds that the
38 person could not reasonably communicate to the trier of fact in the
39 physical presence of the defendant due to emotional trauma; and

40 (4) The prosecuting attorney has informed the defendant and the
41 defendant's attorney at least ten days prior to the taking of a
42 videotaped deposition under this section of the prosecuting attorney's
43 intention to have the person provide testimony by videotape.

44 4. The court shall preside over the depositions, which shall be
45 conducted in accordance with the rules of evidence applicable to all
46 criminal cases. A transcript of such testimony shall be made as soon as
47 possible after the completion of such deposition and shall be provided
48 to the defendant and the defendant's attorney together with all other
49 discoverable materials.

50 5. Upon a finding of trauma as provided under subsection 3 of
51 this section, the court may exclude the defendant from the videotaped
52 deposition proceedings in which the mentally retarded person is to
53 testify. Where any such order of exclusion is entered, the mentally
54 retarded person shall not be excused as a witness at hearing or trial
55 until the defendant has had a reasonable opportunity to review the
56 videotape deposition in private with his or her counsel and to consult
57 with counsel, and until defense counsel has been afforded the
58 opportunity to cross-examine the person following such review and

59 **consultation.**

60 **6. In any order of exclusion issued under this section, if the**
61 **excluded defendant is not represented by counsel and if, upon inquiry,**
62 **it appears to the court that the defendant will be unable to obtain**
63 **counsel within a reasonable period of time, the court shall appoint the**
64 **public defender or other counsel to represent the defendant at the**
65 **videotaped deposition.**

66 **7. The attorney for the defendant shall have at least two**
67 **opportunities to cross-examine a mentally retarded person deposed by**
68 **videotape under this section, once prior to the preliminary hearing and**
69 **at least one additional time prior to the trial.**

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Bill

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